

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 360 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA and sd/-  
MR.JUSTICE D.G.KARIA sd/-

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy  
of the judgement?
4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 No

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STATE OF GUJARAT

Versus

GANPATSINGH B RAJ

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Appearance:

MR.D.N.PATEL,ADDL.PUBLIC PROSECUTOR for Petitioner  
MR AJ PATEL for Respondents.

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CORAM : MR.JUSTICE K.J.VAIDYA and  
MR.JUSTICE D.G.KARIA

Date of decision: 03/02/97

ORAL JUDGEMENT(Per Karia,J.)

This acquittal appeal is directed against the  
judgment and order dated January 17,1985 passed by the

learned Additional Sessions, Kheda at Nadiad in Sessions Case No.115/84, whereby the learned Judge acquitted all the seven accused persons for the offences under sections 147,148,149,307 and 326 of the Indian Penal Code.

It is the prosecution-case that at about 7.30 p.m. on August 31, 1983, being a day of Janmashtami, the incident in question had taken place. There was a fair near the temple of Mahadev since 10-00 in the morning. The complainant, Chhaganbhai Motibhai, had gone to Anand for witnessing a movie on that day and had returned to his village Adas at about 7.30 p.m. At that time, P.W.3 Amarsinh Motibhai, who is the brother of the complainant, informed him that accused No.1, Ganpatsinh Bhupatsinh and his brother accused No.2, Dilipsinh along with accused No.3 Kishorsinh, in company of two other accused persons, were causing puncture in the bicycles that were parked near the aforesaid fair. P.W.3 Amarsinh, therefore, admonished the accused No.1 with the result that there was a quarrel between accused Nos.1,2 and P.W.3. Thereafter between 7.30 and 8.00 p.m., the accused Nos. 1 and 2 armed with knife, and the accused No.3 armed with stick had come in the compound of the residence of the complainant and started abusing P.W.3 Amarsinh. All these three accused persons were threatening to cause death of P.W.3. The complainant tried to stop them and at that time the accused Nos. 1 and 2 caused injuries to the complainant and P.W.3 by means of knife with which they were armed. The accused No.1 also caused grievous injury to Lavjibhai who was the other brother of the complainant. P.W.5 Manibhai Shanabhai also rushed to the scene of occurrence and the accused No.1 had also caused knife-injury to him. Amarsinh, P.W.3, was also caused injuries by knife. The complainant, therefore, lodged the complaint at about 0.45 hours on 1.9.1983. On completion of the investigation, the charge-sheet in respect of the aforesaid offences was submitted against the accused persons. Charge Exh.2 was framed against the accused persons to which they pleaded not guilty.

The learned Additional Sessions Judge, having recorded the evidence of the prosecution witnesses and on appreciation thereof and further on appreciation of the materials placed before him, acquitted the accused persons as mentioned hereinabove.

Mr.D.N.Patel, learned A.P.P. appearing for the appellant-State, has taken us through the medical

evidence and the ocular evidence on record. He has also taken us through the impugned judgment. Having considered the evidence of the eye-witnesses carefully, we are of the opinion that the learned Judge having regard to the inconsistency in the ocular evidence and there being material improvement in the prosecution-case, has rightly come to the conclusion that the offence against accused persons has not been established beyond all reasonable doubt. P.W.7 Dr. Piyushbhai Indubhai Patel deposed at Exh.32 that he had no personal knowledge about the injuries sustained by the injured witnesses. According to him, Dr. Bankim Patel had examined the injured witnesses and same doctor Bankim Patel has gone to America. He produced the medical certificates which are at Exhs.42 to 45 duly proved by P.W.10, Dr. Jayantkumar David Mekwan, Exh.41. Dr. Mekwan has of course deposed that Dr. Bankim Patel examined the injured witnesses, namely, Ravjibhai Motibhai, Amarsinh Motibhai, Manibhai Shanabhai and Chhaganbhai Motibhai. He could not tell if the injured witnesses were admitted in the hospital as indoor patients, nor could he throw light as to what was the nature of the injuries sustained by the injured witnesses. According to him, if the injuries are minor, the junior doctor would attend to them, and Dr. Bankim Patel was the junior doctor in his hospital. He could not say as to how many patients were treated in his hospital on that day. He has also admitted in his cross-examination that he did not remain present at the time of examination of all the patients and that there was no endorsement that he was present at the time of examination of the injured prosecution witnesses. He also admitted that there was no such endorsement in his handwriting in the medical certificates at Exhs.42 to 45. Thus, the nature of injuries said to have been sustained by the injured witnesses has not been established by the prosecution. On scrutiny of the medical certificates, Exhs.42 to 45, it appears that the injuries caused to Ravjibhai, Amarsinh and Manibhai are not so serious as would have caused death of the injured witnesses, if proper and timely treatment would not have been extended to them. Thus, the learned Judge has rightly concluded that there is no evidence that the accused persons had formed an unlawful assembly with intention to cause death or grievous hurt to any of the injured witnesses and that the guilt of the accused persons was proved beyond reasonable doubt.

Referring to ocular evidence of the eye-witnesses, what is stated by them is that there was a mob of about 30 to 35 persons and some of the persons

caused injuries to the injured witnesses.P.W.1 M.S. Brahmbhatt,Exh.22, does not support the prosecution case because he has no personal knowledge about the incident. P.W.2, Chhaganbhai Motibhai Exh.26; P.W.3 Amarsinh Motibhai Exh.28; P.W.4 Ravjibhai Motibhai Exh.29 are real brothers and considering their evidence, there are material contradictions in respect of the number of injuries said to have been caused to them. P.W.5, Manibhai Shanabhai Exh.30 is also a cousin brother of the abovenamed three injured witnesses. Thus, all these eye-witnesses are interested witnesses and as such their evidence has been scrutinized carefully and consciously by the learned Judge. The prosecution-witnesses, particularly P.W.6 Dahyabhai Ashabhai, Exh.31, who is an eye-witness, has deposed that there was a mob of 30 to 35 persons at the scene of occurrence and that he had not identified any of the persons of the mob. He also did not know as to how the persons of the mob had collected there. He had not identified any of the accused Nos.1 to 7. This witness was declared hostile and was cross-examined. Having regard to this ocular evidence read with medical evidence on record, it cannot be said that the guilt of the accused has been brought home successfully. The Panchnama of scene of occurrence at Exh.35 also reads that the place where the incident is said to have taken place did not show any sign of blood. There is major improvement in the prosecution-case, inasmuch as accused Nos.4 to 7 have been added later on, as names of these accused persons do not appear in the complaint.

In the above view of the matter, the learned Judge has rightly acquitted the accused persons. We do not find any substance in the appeal.The learned Addl. Public Prosecutor has also not been able to show any infirmity in the impugned judgment so as to invoke our appellate jurisdiction.

In the result, the appeal fails and is dismissed.

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